IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 874 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT EDUCATION SOCIETY C/O PM PATEL GURUKUL VIDHYA - Petitioner(s)

Versus

DISTRICT EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1,
MR. H.M.PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 3,
MR AD OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner –

trust has prayed for an appropriate writ, direction and/or order quashing and setting aside the communications dated 16th December, 2005 by the Gujarat Secondary & Higher Secondary Education Board (herein after referred to as “the Board”) and dated 27th December, 2005 by the respondent No.1 – District Education Officer, Patan.

2. It is the case of the petitioner – trust that the petitioner – trust is running K.G., Primary, Secondary & Higher Secondary schools in the city of Patan in the name of P.M.Patel Gurukul Vidhya Vihar, Patan, and the aforesaid schools were being run in the rented premises on station road. It is also the case on behalf of the petitioner that the petitioner has constructed its own building on the outskirt of Patan city i.e. Patan – Unjha road and the permission was granted by the Joint Education Director by order dated 25th May, 1992 to start some classes of the

Higher Secondary School and accordingly, the Higher Secondary School was started in the new premises situated at Patan – Unjha road. It is the case on behalf of the petitioner that 19 classes of Secondary and Higher Secondary Schools are being run in the premises which is situated in the city of Patan i.e. in the rented premises. It appears that there is some tenancy dispute between the petitioner – tenant and the landlord which is the subject matter of Civil Revision Application No. 1507 of 1993. It is the contention on behalf of the petitioner that on inspection by the District Education Officer it was found that the basic amenities and facilities are not available in the school premises where the Secondary and some classes of Higher Secondary School are being run in the rented premises and that only 6 rooms are given on rent and the classes of standard 8th to 10th are being run in the morning shift and afternoon shift and the

school rooms are not adequate and that even the school has no playground and there are no other facilities like staff rooms, laboratory, library, computer room, drawing room and therefore, by communication dated 1st January, 2005 the District Education Officer opined that the entire school is required to be shifted to the new premises owned by the petitioner and the petitioner – trust was directed to send the necessary proposal for the same after the examinations are completed i.e. after 1st May, 2005. It was also mentioned in the said communication that if there is no proposal sent in that case necessary procedure will be initiated to close the school. It appears that the petitioner – trust replied to the said communication dated 1st January, 2005 by communication dated 28th April, 2005. It also appears from the record that thereafter by communication dated 23rd March, 2005 the District Education Officer called upon the

petitioner – trust to submit the proposal for shifting the school premises to the new building and by communication dated 31st March, 2005 the petitioner – trust informed the District Education Officer that in the new school building there are no adequate class rooms and for the same the meeting is called for the construction of new class rooms and after the discussion in the said meeting, the directions issued by the District Education Officer will be considered. It appears that thereafter by communication dated 5th May, 2005 the District Education Officer, Patan, called upon the petitioner – trust to show cause why the proceedings should not be initiated for non-compliance of the directions issued by him and why the proposal should not be sent to the Board for the cancellation of the recognition. It appears that by communication dated 16th May, 2005 the petitioner – trust informed the District Education Officer that

the trust is ready and willing to shift at the new premises and therefore, it was requested not to send the proposal to the Board. Again by communication dated ____ June, 2005 the petitioner - trust prayed for some more time. Thereafter by communication dated 21st June, 2005 the District Education Officer called upon the petitioner – trust for hearing and again by communication dated 29th June, 2005 the petitioner - trust requested for some more time to shift the school premises. It appears from the record that by show-cause notice dated 16th September, 2005 the Board called upon the petitioner – trust to show cause why the recognition of the school run by the petitioner – trust should not be cancelled on the ground that there are no school building as per the Regulation – 9 (13)(i)(ii) and that there are lack of basic amenities and facilities like laboratory, library, computer room, drawing room, etc., and that there is

no playground. It appears that thereafter the petitioner - trust has replied to the said show-cause notice by reply dated 26th September, 2005 and by communication dated 28th November, 2005 the petitioner – trust again prayed for some more time to shift the school premises to the new building. It appears that the Board being not satisfied with the bonafides of the petitioner – trust with regard to shifting of the school premises, by impugned communication dated 16th December, 2005 has informed the District Education Officer with a copy to the petitioner – trust that the Executive Committee of the Board in its meeting held on 28th November, 2005 has taken a decision to continue the recognition on condition that the petitioner – trust should shift the school premises within a period of one month to new premises after obtaining necessary permission and if within one month the school management has not shifted the school, than

in that case, the District Education Officer should submit the report to the Board and thereafter, the proceedings for the cancellation of the recognition will be taken. Accordingly by communication dated 27th December, 2005 the District Education Officer has directed the school management to act as per the communication of the Board dated 16th December, 2005, failing which, the District Education Officer is required to submit the report to the Board. Being aggrieved and dissatisfied with the aforesaid two communications/decisions taken on 16th December, 2005 and 27th December, 2005 by the Board as well as by the District Education Officer, Patan, the petitioner – trust has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3.Shri Jani, learned advocate appearing on behalf of the petitioner – trust has

submitted that the impugned decision of the Board dated 16th December, 2005 and the consequential communication by the District Education Officer, Patan dated 27th December, 2005 both are illegal and arbitrary. It is submitted that the school building in the rented premises is adequate and the school is being run in the said premises since 1968 and nothing adverse has been found against the petitioner – trust. It is further submitted that it is likely to take time to construct the class rooms in the new building and in the new school building there are no sufficient class rooms and therefore, it is submitted that to shift the school premises within a period of 1 month as ordered by the Board vide its communication dated 16th December, 2005 is not possible and therefore, it is requested to allow the present Special Civil Application.

4.Shri Prachchhak, learned AGP while opposing

the present Special Civil Application, relying upon the affidavit-in-reply has submitted that sufficient opportunities have been given to the petitioner – trust to shift the school premises right from February – 2005, still the petitioner – trust is not very much serious about the shifting of the school premises though in the rented premises, the basic amenities and facilities as well as the adequate class rooms are not available and the petitioner – trust has go on asking for time to shift the school premises and the bonafides of the petitioner – trust with regard to shifting are doubtful. It is also further submitted by Shri Hemang Raval, learned advocate appearing on behalf of the respondent No.2 – Board that sufficient opportunities have been given to the petitioner – trust to shift the school premises to new building and/or to remove the deficiencies and thereafter, the conscious decision has been taken by the Executive

Committee after hearing the petitioner – trust granting the petitioner – trust some more time to shift the school premises and it is submitted that the decision is neither illegal nor arbitrary and therefore, it is requested to dismiss the present Special Civil Application.

5.It is not in dispute that the petitioner – trust is running the school in two different premises and by order dated 25th May, 1992 the Joint Director of Education granted the permission to the petitioner – trust to run Standard 11th and 12th (General Stream) in the new premises. Again by communication dated 12th September, 2002 the Board granted the permission to the petitioner – trust to run Standard 8th to 10th in the new school premises, more particularly, 3 classes of Standard 8th to 10th. It is found by the Board as well as by the District Education Officer that there are no adequate and/or sufficient

class rooms in the old building and that there are no basic amenities and/or facilities available like Computer Room, Laboratory, Playground, etc. and therefore, the show-cause notice came to be issued by the Board calling upon the petitioner – trust to show cause why the recognition of the school should not be cancelled. Even thereafter also, the District Education Officer as well as the Board has called upon the petitioner - trust to shift the school premises to the new building in view of the above deficiencies and all through out since January – 2005, the petitioner – trust has requested to grant some more time to shift the school premises and has go on asking for the time. Considering the request made by the petitioner – trust, the time as prayed for was extended but it appears that ultimately having found that the bonafides of the petitioner – trust with regard to shifting are doubtful, again the petitioner – trust

was directed to shift the school premises after obtaining necessary permission and is directed to send the proposal which is not done by the petitioner – trust till date and they have simply asked for the time to shift the school premises. After considering the reply submitted by the petitioner – trust the Executive Committee of the Board has taken a conscious decision to grant 1 month time to the petitioner – trust to shift the school premises, failing which, the District Education Officer was directed to send the proposal for the cancellation of the recognition of the petitioner – trust and the petitioner – trust is communicated the said decision by the communication dated 16th December, 2005 by the Board and vide Communication dated 27th December, 2005 by the District Education Officer. Even this Court has also shown its inclination to grant time upto June – 2006 so that the school can be shifted in the new building in the new

academic year but the learned advocate appearing on behalf of the petitioner – trust has refused to accept the same. When having found that the petitioner – trust is already having a new premises and the school which is being run in the old premises is not having adequate class rooms and basic amenities and facilities and thereafter, the conscious decision has been taken by the Board as well as the District Education Officer directing the petitioner – trust to submit the proposal for the shifting of the school premises to the new building, failing which, the procedure for cancellation of the recognition of the school can be initiated, in that case it cannot be said that there is any illegality committed either by the Board and/or the District Education Officer. It appears from the record and the correspondence that all through out the petitioner – trust has requested for some more time to shift the school premises and

has never refused to shift the school premises. However, the petitioner – trust is asking for the time since January – 2005 and even after a period of one year also the petitioner – trust is not ready to shift the school premises to the new building. Thus, it appears that the bonafides of the petitioner – trust are not good and can be doubted. Under the circumstances, it cannot be said that any illegality has been committed by the Board and/or by the District Education Officer. By the impugned communications the petitioner – trust is called upon to shift the school premises after obtaining necessary permission, failing which, the proceedings for the cancellation of the recognition will be initiated by which it cannot be said that the order passed by the Board as well as the District Education Officer are so perverse and/or arbitrary which calls for the interference of this Court in exercise of powers under Article 226 of the Constitution

of India.

6.For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Notice is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.